UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD REGION 8

SPENCER FORGE & MANUFACTURING, INC.

Employer-Petitioner

and CASE NO. 8-RM-1112

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE NO. 1297

Union

DECISION AND ORDER

On December 30, 2009, the Employer-Petitioner, Spencer Forge & Manufacturing, Inc., filed this petition. The Employer maintains that a question concerning representation exists and seeks an election. It contends that directing an election is appropriate because of the dissolution of the incumbent local union and its absorption into a larger, amalgamated body, Local Lodge No. 1297. The Employer–Petitioner further contends that the result of the internal consolidation is creation of a union (Local Lodge 1297) which does not share substantial continuity with the pre-merger union (Local Lodge 523), thus invalidating the former's claim to constitute the sole and exclusive bargaining representative of the Employer's production and maintenance employees, including job setters, employed at its Spencer, Ohio facility. There are approximately 25 employees in the bargaining unit.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

On January 15, 2010, I issued an **Order to Show Cause**, which summarized certain facts established by an administrative investigation of the petition and I directed the parties to file written cause, with supporting documentation and governing case authority, as to why the petition should not be dismissed.

Based on the administrative investigation of this petition, I find:

1. The Employer-Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.

¹ The Employer-Petitioner is an Ohio corporation with its principal place of business located at 225 North Main Street, Spencer, Ohio 44275, where it is engaged in the manufacturing of axle shafts and torsion bars.

1.

The Unions involved are labor organizations within the meaning of the Act. While Local Lodge No. 523 of District Lodge No. 34 is the signatory to the current collective bargaining agreement entered into with the Employer, Local Lodge No. 1297 of District Lodge No. 54 now claims to represent those employees.

THE ISSUE

Should an election be directed in this matter or should the petition be dismissed because no question concerning representation exists?

DECISION SUMMARY

Based on the complete administrative investigation, including consideration of position statements and supporting evidence submitted by the parties both before and after the issuance of the **Order to Show Cause**, I conclude that the petition should be dismissed.

BACKGROUND

The Employer-Petitioner and the International Association of Machinists and Aerospace Workers (IAM) have had a bargaining relationship for several decades. The most recent collective bargaining agreement, executed by the Employer-Petitioner and IAM Local Lodge No. 523 of District Lodge No. 34, is effective from June 29, 2007 through June 28, 2010, and is limited to the unit of employees at the Spencer, Ohio facility. The contract contains a union security clause and a dues checkoff authorization provision. Article III Section 3 of the Agreement reads: "The Union will notify the Company in writing of the proper amount of dues, which is to be deducted." The Agreement does not specify the amount of monthly dues and, instead, obligates each unit employee to pay such amount as may be established by the Union.

EVENTS LEADING TO THE FILING OF THE PETITION

In early May 2009, the International Union realigned its Local Lodges in Central Ohio. Thus, authority over Local Lodge 523 was transferred from District Lodge 34 (Columbus, Ohio) to District Lodge 54 (Cleveland). The responsibility for servicing the Spencer Forge bargaining unit was given to District Lodge 54 Business Representative Jack Baker, who notified the Employer-Petitioner of these developments shortly afterwards. In the ensuing months, Baker met with the Employer-Petitioner and unit officers at the Spencer Forge plant on union-related business. This included a grievance meeting on July 10, 2009, with Chief Steward Bill Frye, a Spencer Forge employee who had signed the 2007-10 contract in his capacity as a committeeman for Local Lodge 523.

Effective August 25, 2009, the International Union approved the merger of Local Lodge 523 into Local Lodge 1297. The four bargaining unit officers servicing the Spencer Forge unit remained in place.

On September 29, 2009, Local Lodge 1297 Recording Secretary Helen Coombs informed the Employer-Petitioner that, effective October 1, 2009, the dues for members would rise to \$40.20 per month. Additionally, notice was given of revised initiation and reinstatement fees.

On September 30, 2009, Employer-Petitioner Vice President Lee Hahner e-mailed District Lodge 54 Business Representative Baker questioning Coombs' letter. Hahner, noting that the contract identified the bargaining representative as Local Lodge 523, asked Baker if the assignment of dues to Local Lodge 1297 was an error.

Baker responded by e-mail on October 5, 2009, advising Hahner of the merger of Local Lodge 523 into Local Lodge 1297 and verifying the contents of Coombs' letter. Baker further stated that all of the committeepersons and stewards "remain the same unless notified otherwise."

On November 4, 2009, Baker wrote Hahner regarding a report from Chief Steward Frye that the Employer-Petitioner had refused to recognize Local Lodge 1297 as the bargaining agent for its represented employees. Concerning the Employer-Petitioner's obligation to recognize Local Lodge 1297 as the post-merger successor to Local Lodge 523, Baker stated:

All organizational decisions regarding the merging of Local Lodges and the direction of day to day business of the International Association of Machinists and Aerospace Workers is [sic] vested solely with this Organization and not [sic] a means or vehicle for your Company or any Company to diminish or fail to recognize our authority afforded under our current Collective Bargaining Agreement.

On November 20, 2009, Baker informed Hahner of the election and installation of two new unit officers to represent the employees at Spencer Forge regarding grievances and negotiations on behalf of members of Local Lodge 1297, District Lodge 54. Baker further advised the Employer that the local president would be the "chief steward" and that the vice president would be the "shop steward." Baker did not outline or propose revisions to any other feature of the existing collective bargaining agreement.

The Employer filed the instant Petition on December 30, 2009.

The parties' have continued to exchange communications over the past several months and conferred at the Spencer plant in early January of this year concerning issues raised by this Petition. Contrary to the instruction of Recording Secretary Coombs' correspondence of September 29, 2009, the Employer has continued to deduct authorized union dues from its unit employees at the lesser monthly rate previously charged by Local Lodge 523. Those dues collections have been remitted to the International Union.

POSITION OF THE PARTIES

The **Employer-Petitioner** contends that the merger of the previously recognized bargaining representative into the larger, more geographically expansive amalgamated local lodge was a measure so transformative as to alter the fundamental character of the established bargaining agent and disrupt the continuity of the bargaining relationship, thus creating a question covering representation that can best be resolved by a secret ballot election.

The Employer-Petitioner notes that Local Lodge 523 consisted exclusively of some two dozen employees at its Spencer, Ohio facility; that all official positions within the local lodge were filled by persons selected from the Spencer Forge employee unit by their co-workers; and that the local lodge enjoyed a wide range of autonomy and discretion in the conduct of its representational functions.

The Employer contends that subsequent to the merger of Local Lodge 523 into the amalgamated Local Lodge 1297, the established bargaining unit for Local Lodge 523 became a much larger entity populated primarily by employees who are neither affiliated with Spencer Forge, within the same geographic area, or within the same industry. Critically, all authority positions within Local Lodge 1297 are held by employees of other companies, and following the November election of unit officers the on-site representation of Spencer Forge employees was cut from four elected positions to two.

According to the Employer, by force of sheer numbers, the employees at Spencer Forge have lost all autonomy and have surrendered a concern for their particular interests to the remotely located leadership of the larger, more heterogeneous body. As an example of that loss of influence, the Employer cited Local Lodge 1297's increase in the amount of monthly dues previously assessed to Local Lodge 523 member-employees as well as the near doubling of initiation and reinstatement fees.

Finally, the Employer-Petitioner argues that the circumstances in this case are analogous to those examined in <u>Western Commercial Transport, Inc.</u>, 288 NLRB 27 (1988), where the Board held that a local union's loss of autonomy, the replacement of local members in authority by non-local persons, and the diminished rights of local members as a consequence of their assimilation into a much larger labor organization destroyed any semblance of continuity in the identity of the representing entity. As the fundamental character of the small independent union was substantially altered as a result of its affiliation with and absorption by a much larger international organization, the circumstances were deemed by the Board to constitute changes so dramatic that a question concerning representation was raised.

According to the **Union**, the merger of affiliated local bodies is an ordinary and unremarkable intraorganizational decision. The outcome of that merger, the amalgamated Local Lodge 1297, is the exclusive bargaining representative of the petitioned-for employees and no question concerning representation exists.

The Union argues that the instant petition should be dismissed because there exists no legitimate question concerning representation which would warrant an election. Contrary to the Employer, the Union maintains that substantial continuity can be shown with respect to the bargaining representative for Spencer Forge employees following the merger of the former bargaining representative (IAM Local Lodge 523) into IAM Local Lodge 1297 because the present situation involves nothing more than the merger of two local affiliates within the same international parent union.

The International officers and the organizational constitution continue to govern the merged entity. While the membership composition of the amalgamated Local Lodge 1297 does include represented employees at other shops and employers, the represented employees at Spencer Forge & Manufacturing in Spencer, Ohio have not been merged or subsumed into a larger, amalgamated bargaining unit. Rather than a multi-employer or multi-site bargaining unit, Spencer Forge employees have remained a separate and distinct unit with its own unit officers and a stand-alone collective bargaining agreement, by-laws, and voting procedures. The right to vote on Spencer Forge contract issues remains limited to those eligible employees in the existing bargaining unit.

Finally, the Union notes that it has not merged or proposed to merge the Spencer Forge bargaining unit into any larger multi-industry or multi-site unit which includes employees who are not employed by Spencer Forge. Rather, it contends that the Employer has misconstrued the practical effects of the intra-union merger of Local Lodge 523 into Local Lodge 1297 to mean a loss of the separate identity and standing of the Spencer Forge bargaining unit to a larger, area-wide bargaining unit. The Union maintains that no such multi-employer, multi-industry bargaining unit exists under its control and jurisdiction.

ANALYSIS

Based on the administrative investigation, I conclude that no question concerning representation exists. This case does not involve a claim that the Employer has a good faith doubt regarding Local Lodge 1297's majority status. There are no valid competing claims of representation made here by rival labor organizations. Local Lodge 523 has ceased to exist and with its disappearance the responsibility for representing the unit employees at Spencer Forge has been delegated by the International Union to Local Lodge 1297. This assignment of bargaining rights falls clearly under the purview and authority of the parent International Union.

In several recent decisions, the Board has made it clear that the affiliation or the disaffiliation of a union within a larger labor organization does not, standing alone, create a question concerning representation. New York Center for Rehabilitation Care, 346 NLRB 447 (2000), enf. 506 F.3d 1070 (D.C. Cir. 2007); Laurel Bay Healthcare of Lake Lanier, 346 NLRB 159 (2005), enf. 209 Fed Apx. 345, 181 LRRM 2078 (4th Cir. 2006). In addition, in Raymond F. Kravis Center for the Performing Arts, 351 NLRB 143 (2007), the Board decided in light of the Supreme Court's decision in NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First), 475 U.S. 192 (1986) under what circumstances a union affiliation or merger may relieve an employer of its obligation to recognize and bargain with an incumbent union. The Board abandoned the "due process" component of the two-prong test that it had applied in the past and decided that henceforth the sole criterion would be "substantial continuity." The Board noted (id at 147) that "...when there is a union merger or affiliation, an employer's obligation to recognize and bargain with an incumbent union continues unless the changes resulting from the merger or affiliation are so significant as to alter the identity of the bargaining representative." The Board reasoned that if it is determined that the post-affiliation union lacks a substantial continuity with the pre-affiliation union, a question concerning representation is raised and the employer is not required to recognize the union.

Conversely, in cases in which there is a substantial continuity between the pre-affiliation and post-affiliation union, the post-affiliation union is largely unchanged from the pre-affiliation entity (i.e., nothing has happened to the union that would reasonably lead one to believe that the employees no longer support it), no question concerning representation would be raised, and all statutory bargaining obligations continue to attach to the parties. In assessing the existence of "substantial continuity", the Board considers whether the change is sufficiently dramatic to alter the union's identity in the context of the totality of the circumstances. May Department Stores, 289 NLRB 661, 665 (1988), enfd. 897 F.2d 221 (7th Cir. 1990) and Mike Basil Chevrolet, 331 NLRB 1044 (2000).

The International Union's decision to cease the operations of Local Lodge 523 and to transfer the employees in the bargaining unit previously represented by Lodge 523 to the authority of Local Lodge 1297, District Lodge 54 does not raise a question concerning representation. As noted, the Employer was informed of the reassignment of bargaining rights to that entity and that all provisions of the existing collective bargaining agreement would continue in full force and effect. While new officers were elected by unit employees in the local election held shortly after the merger of Local Lodge 523 into Local Lodge 1297, that fact alone does not alter the fundamental identity of the employees' bargaining representative. Because of the continued affiliation of Local Lodge 1297, District Lodge 54 with the International Association of Machinists and Aerospace Workers, there appears to be no change in the essential identity of the incumbent bargaining representative. Accordingly, the Employer-Petitioner's reliance on Western Commercial Transport, supra is misplaced. Clearly, the assumption of a small independent labor organization by a much larger international union is factually distinguishable from the instant case.

In view of the above, it appears that the Employer-Petitioner's assertion that the merger of the Local Lodges constitutes grounds to question the continued representative status of the Union as the sole and exclusive bargaining representative for its employees has no foundation.

IT IS HEREBY ORDERED that the petition in this matter be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. If a party wishes to file a request for review electronically, guidance for E-filing can be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed. This request must be received by the Board in Washington by March 10, 2010.

Dated at Cleveland, Ohio this 24th day of February 2010.

/s/ [Frederick J. Calatrello]

Frederick J. Calatrello Regional Director National Labor Relations Board Region 8